

**Statement of Executive Action in Response to the Government Accountability Office
Report: *Workplace Safety and Health: OSHA Can Better Respond To State-Run Programs
Facing Challenges***

The Department of Labor appreciates the opportunity to submit a statement in response to the Recommendations for Executive Action in the Government Accountability Office's (GAO's) report entitled *Workplace Safety and Health: OSHA Can Better Respond To State-Run Programs Facing Challenges*. For the most part, OSHA agrees with GAO's recommendations and will work to ensure that OSHA addresses the challenges that pose risks to states with state-run programs. Planned Agency actions will address the recommendations as follows:

Recommendation: The Secretary of Labor should direct the Assistant Secretary for Occupational Safety and Health to take steps to include leveraging existing federal and state resources to develop more effective and efficient ways to access and deliver training, such as partnering with OSHA Training Institute Education Centers and systematically coordinating opportunities for newly hired state inspectors to obtain on-the-job training, such as by shadowing experienced inspectors from OSHA or other state-run programs.

OSHA Response:

As recommended by GAO and in response to requests from the state-run programs to develop more effective and efficient ways to access and deliver training, OSHA's Training Institute (OTI) is taking the following steps:

On the Job Training: OSHA will issue a memorandum during Fiscal Year 2013 directing the Regional Administrators to make on-the-job training opportunities available to State Plan compliance officers, upon request.

Class Registration (equal access): OTI uses an automated registration system for registering students for all of its courses, seminars and webinars. This system allows Federal OSHA, State Plan States, and State Consultation training coordinators *equal* access and opportunity to register their students in OTI courses, seminars and webinars. In situations where a critical need is identified, OTI will give priority enrollment status to new state inspectors, as it did for Hawaii in 2012.

Advanced registration for each fiscal year opens in mid-April of the preceding year. To provide western State Plan States, State Consultation and Federal OSHA equal access, OTI begins Advanced Registration in the afternoon, ensuring that all training coordinators can access the registration system during their normal business hours.

Annual Training Needs Survey: In the first quarter of every fiscal year, OTI conducts a training needs survey, the results of which are used to build the OTI training schedule for the coming fiscal year. Federal OSHA, State Plan States and State Consultation training coordinators are asked to submit their training needs by OTI course and seminar. Additionally, they are asked to identify any OTI courses they would like OTI to bring to their Federal Region or State. OTI uses the results of the survey to develop the upcoming fiscal year's training schedule.

Off-site courses: Each year OTI also conducts a limited number of courses at off-site locations. State Plan states have the opportunity to request off-site courses through the Annual Training Needs Survey. Additionally, State Plan states will contact OTI about bringing courses to a state

outside of the Annual Training Needs Survey process. OTI decides to take courses off-site based on the number of instructors on-board, availability of required training facilities and/or equipment, and other training priorities. OTI is also coordinating with OSHA's Region 10 and the State of Washington to conduct four courses at the Department of Energy's training site in Richland, Washington. It is expected that some of the course content will be presented by State enforcement staff. Finally, experts from State Plan States serve as instructors for the *State Plan Monitoring* course (OTI#1530), which is the primary instruction provided to federal staff that serve in a State Plan monitoring capacity.

Distance learning/webinars: OTI conducts between 10 and 12 webinars each year on a variety of emerging safety and health issues. State Plans are invited to participate in almost all of these webinars. Additionally, experts from State Plan States have been presenters in a number of the OTI Webinars, including *Overview: Working with State Plans* (OTI#0060 – October 2012) and *State Plan Changes* (OTI#0061 – November 2012), as well as instructors for the *State Plan Monitoring* seminar (OTI#9530), which was held in January 2013 in Santa Fe, NM and again in February 2013 in Washington, DC. OTI plans to continue offering webinars and State Plans will be allowed to participate in virtually all of them

Regarding the recommendation to partner with OTI's Education Centers, it is important to remember that OTI's Education Centers are not funded by OSHA, nor do they meet the requirements for mandatory training for compliance safety and health personnel and they are not equipped to provide the level of training on OSHA standards, procedures, and policies that is required to effectively train a compliance officer. The OTI Education Centers were established to provide opportunities for private sector and other federal agency personnel to attend occupational safety and health training courses. OTI continually looks for opportunities to partner with the states and the OTI Education Centers on special projects and initiatives.

Recommendation: The Secretary of Labor should direct the Assistant Secretary for Occupational Safety and Health to identify states with challenges that need to be addressed and require those states to develop timely plans for addressing their challenges, and if such plans are not developed, to establish time frames for when OSHA would resume sole or concurrent federal enforcement responsibility for the state-run program. This process should be tailored to the state's unique circumstances.

OSHA Response:

OSHA took a significant step towards enhancing its ability to identify State Plans with challenges through the Enhanced Federal Annual Monitoring and Evaluation (EFAME) in FY 2009. In FY 2012, OSHA decided to implement a biennial FAME schedule consisting of a comprehensive evaluation with a mandatory on-site case file review every other year, and an abridged follow-up evaluation without a mandatory case file review component in the off years. This oversight system has enabled OSHA to steadily work to resolve process and consistency issues that have been identified through this process.

OSHA is actively working to formalize the revised process with the State Plan Policies and Procedures Manual (SP3M), which is expected to be completed by the end of FY 2013. The revised procedures formalize the biennial FAME cycle and the already established practice of issuing recommendations to each State Plan tailored to the individual needs of the State, as well as requiring State Plans to formally respond to findings through a Corrective Action Plan (CAP). CAPs will establish timeframes for completing the corrective actions that are mutually agreeable to the State Plan and to Federal OSHA. CAP milestones and timeframes will be monitored

through the biennial FAME process. OSHA also expects the revised SP3M to include a chapter that will set forth procedures for how and under what circumstances to initiate the process of modifying or withdrawing a State Plan when significant corrective actions are not addressed within acceptable timeframes.

Recommendation: To better position the agency to respond to states facing challenges, OSHA should document lessons learned from its experiences in assisting states with their enforcement responsibilities and resuming federal enforcement of state-run programs.

OSHA Response:

OSHA agrees that, while each State Plan intervention needs to be tailored to the specific circumstances at hand, documenting lessons learned would prove valuable for informing future interventions. OSHA will begin formally documenting lessons learned based on knowledge gained during the process of resuming concurrent jurisdiction in Hawaii. Lessons learned in Hawaii, as well as future interventions will also inform the policies established in the SP3M chapter on modifying or withdrawing a State Plan.